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Operations Noble Eagle, Enduring Freedom, and Iraqi Freedom: Questions and Answers About U.S. Military Personnel, Compensation, and Force Structure

Updated February 16, 2005

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Report Documentation Page				Form Approved OMB No. 0704-0188	
Public reporting burden for the collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to a penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.					
1. REPORT DATE 16 FEB 2005		2. REPORT TYPE N/A		3. DATES COVERED -	
4. TITLE AND SUBTITLE Operations Noble Eagle, Enduring Freedom, and Iraqi Freedom: Questions and Answers About U.S. Military Personnel, Compensation, and Force Structure				5a. CONTRACT NUMBER	
				5b. GRANT NUMBER	
				5c. PROGRAM ELEMENT NUMBER	
6. AUTHOR(S)				5d. PROJECT NUMBER	
				5e. TASK NUMBER	
				5f. WORK UNIT NUMBER	
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) Congressional Research Service The Library of Congress 101 Independence Ave SE Washington, DC 20540-7500				8. PERFORMING ORGANIZATION REPORT NUMBER	
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES)				10. SPONSOR/MONITOR'S ACRONYM(S)	
				11. SPONSOR/MONITOR'S REPORT NUMBER(S)	
12. DISTRIBUTION/AVAILABILITY STATEMENT Approved for public release, distribution unlimited					
13. SUPPLEMENTARY NOTES					
14. ABSTRACT					
15. SUBJECT TERMS					
16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT SAR	18. NUMBER OF PAGES 20	19a. NAME OF RESPONSIBLE PERSON
a. REPORT unclassified	b. ABSTRACT unclassified	c. THIS PAGE unclassified			

Operations Noble Eagle, Enduring Freedom, and Iraqi Freedom: Questions and Answers About U.S. Military Personnel, Compensation, and Force Structure

Summary

This report provides short answers to commonly asked questions about military personnel, compensation, and force structure issues related to Operation Noble Eagle (ONE), Operation Enduring Freedom (OEF), and Operation Iraqi Freedom (OIF). Operation Noble Eagle is the name given to military operations related to homeland security and support to federal, state, and local agencies in the wake of the September 11th attacks. Operation Enduring Freedom includes ongoing operations in Afghanistan, operations against terrorists in other countries, and training assistance to foreign militaries which are conducting operations against terrorists. Operation Iraqi Freedom includes the invasion of Iraq, the defeat of Saddam Hussein's regime, and the subsequent peacekeeping, rebuilding, and counter-insurgency operations in Iraq.

The section on personnel addresses issues such as casualties, reserve mobilization, "sole surviving son or daughter" status, conscientious objection, and "stop-loss." The section on compensation addresses issues related to the pay and benefits — including death benefits — provided to members of the U.S. military participating in ONE/OEF/OIF and their families. The section on force structure addresses issues related to how ONE/OEF/OIF might affect the number of personnel needed by the military, and responds to common questions about whether a return to conscription is likely under current circumstances.

This report will be updated as needed.

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Operations Noble Eagle, Enduring Freedom, and Iraqi Freedom: Questions and Answers About U.S. Military Personnel, Compensation, and Force Structure

Since the September 11th attacks on the World Trade Center and the Pentagon, the United States has launched three major military operations: Operation Noble Eagle (ONE), Operation Enduring Freedom (OEF), and Operation Iraqi Freedom (OIF). Operation Noble Eagle is the name given to military operations related to homeland security¹ and support to federal, state, and local agencies² in the wake of the September 11th attacks. Operation Enduring Freedom includes ongoing operations in Afghanistan, operations against terrorists in other countries, and training assistance to foreign militaries which are conducting operations against terrorists. Operation Iraqi Freedom includes the invasion of Iraq, the defeat of Saddam Hussein's regime, and the subsequent peacekeeping, rebuilding, and counter-insurgency operations in Iraq. This report provides short answers to commonly asked questions about military personnel and compensation issues related to these operations.

The questions are grouped into three major thematic areas: personnel, compensation, and force structure. The section on personnel addresses issues such as casualties, reserve mobilization, "sole surviving" son or daughter status, conscientious objection, and "stop-loss." The section on compensation addresses issues related to the pay and benefits — including death benefits — provided to members of the U.S. military participating in ONE/OEF/OIF and their families. The section on force structure addresses issues related to how ONE/OEF/OIF might affect the number of personnel needed by the military, and answers common questions about whether or not a return to conscription is likely under current circumstances.

¹ For example, air patrols over U.S. cities.

² For example, various types of disaster assistance provided at the sites of the terrorist attacks.

Personnel

How many U.S. military personnel have died in connection with OEF and OIF? Are there any servicemembers who are missing in action (MIA) or prisoners of war (POW)?

As of February 9, 2005, there were 156 fatalities among U.S. military personnel serving in OEF.³ Of these, 65 were categorized as killed in action, while 91 were categorized as non-hostile deaths.⁴ As of that same date, 426 military personnel had been wounded in action while serving in OEF. Of these, 140 were returned to duty within 72 hours.

As of February 9, 2005, there were 1,448 fatalities among U.S. military personnel serving in OIF. Of these, 1,110 were categorized as hostile deaths and 338 as non-hostile. As of that same date, 10,871 military personnel had been wounded in action while serving in OIF. Of these, 5,190 were returned to duty within 72 hours.⁵

As of February 9, 2005, there was one U.S. soldier classified as a POW, Private First Class Keith M. Maupin.⁶ There were no U.S. military personnel classified as MIA.

How many reservists have been called to active duty by the federal government for ONE, OEF, and OIF? After activation, how long can they be required to serve on active duty?

Between September 11, 2001 and February 16, 2005, a total of 477,709 reservists (which includes the National Guard) were involuntarily called to active duty under *federal* orders for ONE, OEF, and OIF. Of these, 179,445 were serving on active duty as of February 16, 2005, while 298,264 had been demobilized prior to that date after completing their tours.⁷ Note, however, that the total mobilization and demobilization figures count reservists more than once if they have been mobilized more than once. The total number of *individuals* mobilized is therefore

³ Includes casualties which occurred in the following countries: Afghanistan, Pakistan, Uzbekistan, the Philippines, Kuwait, Qatar, Djibouti, Cuba (Guantanamo Bay), and the waters of the Persian Gulf and Arabian Sea. Source: Department of Defense. Available at [<http://www.dod.gov/news/casualty.pdf>]

⁴ Two of the most common types of non-hostile deaths are deaths attributable to vehicle accidents and deaths due to illness.

⁵ Includes casualties which occurred in Iraq. Source: Department of Defense. Available at [<http://www.dod.gov/news/casualty.pdf>]

⁶ Department of Defense News Release, *DoD Announces Soldier's Captured Status*, April 23, 2004.

⁷ Colonel James Shoenhard, Office of the Assistant Secretary of Defense, Reserve Affairs.

lower than stated above, and probably by a significant margin due to the number of people who have been called up more than once.⁸

These reservists were called to active duty under a mobilization authority known as Partial Mobilization. In time of a national emergency declared by the President, Partial Mobilization authorizes the President⁹ to order members of the Ready Reserve to active duty for a period not to exceed 24 consecutive months. Up to 1 million members of the Ready Reserve may serve on active duty at any one time under this provision of law. Although the President may declare a national emergency and mobilize reservists under this provision of law without approval from Congress, he is required to make regular reports to Congress justifying the mobilization of any activated units and identifying their mission and location. This authority was also used to mobilize reservists during the later part of the Persian Gulf War (1991).

DoD's general policy has been to keep reservists on active duty for no more than one year; and in the majority of cases to date, mobilized reservists have not been required to serve more than one year. However, the policy does allow the Service Secretary to keep reservists on active duty for up to 24 cumulative months if they are needed to meet operational or other requirements. It should be noted that DoD's policy capping reserve service at 24 *cumulative* months is more restrictive than the 24 *consecutive* month cap specified in law. If DoD were to change its policy to mirror the law, reservists could be mobilized multiple times for tours of 24 consecutive months apiece.

Also, some members of the National Guard have been called up to perform duties related to ONE in a *non-federal status*. Additionally, in 2001 and 2002, thousands of members of the National Guard were activated at the order of their respective governors to provide additional security at airports. They were called up under Title 32 of the U.S. Code, which means they were under state control, but with federal pay and benefits.¹⁰ These distinctions have a significant bearing on the type of pay, benefits, and legal protections to which the affected individuals are entitled.

⁸ Based on the data available to the author, it is unclear how many individuals have been involuntarily activated more than once. However, given the historically large size of this mobilization, and the comparatively long duration (the mobilization began over three years ago), the figure is likely to be substantial.

⁹ Section 12302 of Title 10 states "In time of national emergency declared by the President ... or when otherwise authorized by law, an authority designated by the Secretary concerned may, without the consent of the persons concerned, order any unit, and any member not assigned to a unit organized to serve as a unit, in the Ready Reserve under the jurisdiction of that Secretary to active duty (other than for training) for not more than 24 consecutive months." Although the law assigns authority to mobilize reservists to an official designated by "the Secretary concerned," the President, in his capacity as Commander in Chief, is ultimately responsible for the decision to order reservists to active duty.

¹⁰ Data on reservists participating in these ways are limited. Calculations made by Robert Goldich, Specialist in National Defense, Congressional Research Service from official data provided by the Department of Defense indicate that at least 40,000 reservists have served in support of ONE/OEF/OIF under some authority other than Partial Mobilization (e.g. volunteers, state active duty, full-time National Guard duty).

For more information on this topic, see CRS Report RL30802, *Reserve Component Personnel Issues*, by Lawrence Kapp.¹¹

What policies govern the deployment of “sole surviving” sons and daughters?

No statute governs the deployment of “sole surviving” sons and daughters in today’s all-volunteer military.¹² However, the Department of Defense does have an administrative policy governing assignments of a “sole surviving” son or daughter.¹³ This policy allows “sole surviving” sons or daughters to apply for a protective assignment status which, once approved, prohibits his or her assignment “to any overseas area designated as a hostile-fire or imminent-danger area ... nor to duties that regularly might subject him or her to combat with the enemy.”¹⁴ In addition to protective assignment, enlisted personnel who become sole surviving sons or daughters after having entered service may also apply for and be granted a discharge in most circumstances.¹⁵

However, the term “sole surviving son or daughter” does not simply mean the only child in a family. According to DOD’s definition, a sole surviving son or

¹¹ See “Military Force Structure” at [<http://www.congress.gov/brbk/html/ebter188.html>].

¹² However, a law prohibits the *conscription* of “surviving sons” — not necessarily *sole* surviving sons — in certain circumstances. Conscription, also known as the draft, is governed by the Military Selective Service Act, located at 50 USC Appendix 451 to 471. Part of this law, 50 USC Appendix 456 (o), states: “Except during the period of a war or a national emergency declared by Congress, no person may be inducted for training and service under this title (sections 451 to 471a of this Appendix) unless he volunteers for such induction (1) if the father or the mother or a brother or a sister of such person was killed in action or died in line of duty while serving in the Armed Forces after December 31, 1959, or died subsequent to such date as a result of injuries received or disease incurred in line of duty during such service, or (2) during any period of time in which the father or the mother or a brother or a sister of such person is in a captured or missing status as a result of such service. As used in this subsection, the term ‘brother’ or ‘sister’ means a brother of the whole blood or a sister of the whole blood, as the case may be.” Note, however, that the legal authority to induct men into the military, which is contained in the Military Selective Service Act, expired on July 1, 1973. Therefore, this provision of law is not currently relevant.

¹³ Department of Defense Directive 1315.7, *Military Personnel Assignments*, paragraph 5.10.

¹⁴ Department of Defense Directive 1315.7, *Military Personnel Assignments*, paragraph 5.10.1.

¹⁵ Department of Defense Directive 1315.15, *Special Separation Policies for Survivorship*, paragraph 4. This policy does not apply during periods of war or national emergency declared by Congress, if the individual has court-martial charges pending, if the individual is being processed for involuntary separation for cause, or if the individual voluntarily enlists, reenlists, or voluntarily extends his or her term of active duty after being notified of the family casualty on which the survivorship claim is made.

daughter is the only remaining son or daughter in a family where the father,¹⁶ or one or more sons or daughters, served in the Armed Forces of the United States and, because of hazards with such military service, either (1) was killed, (2) died as a result of wounds, accident or disease, (3) is in a captured or missing-in-action (MIA) status, or (4) is permanently 100-percent disabled, is hospitalized on a continuing basis, and is not employed gainfully because of such disability.¹⁷

The “sole surviving” son or daughter issue is different from the commonly cited, albeit fictional, “Sullivan Act” or “Sullivan Law.” The Sullivans were five brothers serving on board a single U.S. Navy ship (the *U.S.S. Juneau*) during World War II. Their ship was sunk by the Japanese on November 13, 1942, and all of the brothers died. In response to this tragedy, some proposals were made to prohibit brothers from serving together on the same ship, but Congress did not pass any such law, nor did the President issue an executive order to that effect. In response to a similar tragedy which occurred the previous year (three brothers serving aboard the *U.S.S. Arizona* perished during the Pearl Harbor attacks) the Navy did issue a policy forbidding commanding officers from approving requests from brothers to serve together, but the policy was apparently not enforced and did not prohibit the Navy from assigning brothers to the same ship.¹⁸

Current DOD policy states that “concurrent assigning of service members of the immediate family to the same military unit or ship is not prohibited, but requests for reassignment to a different unit of ship may be approved for all but one service member.” Approval of such requests, however, are contingent upon the needs of the military.¹⁹

What policies govern the status of conscientious objectors?

No statute governs the treatment of conscientious objectors currently serving in the military.²⁰ However, the Department of Defense does have an administrative

¹⁶ The definition in DOD Directive 1315.7 does not include the term “mother,” but this appears to be an oversight, as the other DOD Directive dealing with the issue of sole surviving sons and daughters, DOD Directive 1315.15, does include the term mother.

¹⁷ Department of Defense Directive 1315.7, *Military Personnel Assignments*, Enclosure 2, paragraph E2.1.39.

¹⁸ Department of the Navy, Naval Historical Center, *Frequently Asked Questions: Sullivan Brothers*, located at [<http://www.history.navy.mil/faqs/faq72-1.htm>].

¹⁹ Department of Defense Directive 1315.7, *Military Personnel Assignments*, paragraph 4.9.

²⁰ However, there is a law which deals with the treatment of conscientious objectors during a draft. The draft, is governed by the Military Selective Service Act, codified in 50 USC Appendix 451 to 471. Part of this law, 50 USC Appendix 456(j), states: “Nothing contained in this title (sections 451 to 471a of this Appendix) shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. As used in this subsection, the term ‘religious training and belief’ does not include essentially political, sociological, or philosophical views, or a merely personal moral (continued...) ”

policy relating to this issue.²¹ Of course, in today's all-volunteer military, those who have moral objections to participating in war will likely choose not to join the military. Nonetheless, some people volunteer to join the armed forces with every intention of fulfilling their military obligations, but later develop religious or moral objections to participation in war. Such people may apply for transfer to non-combat related duties or for an administrative discharge, depending on the nature of their convictions. Following application, a formal investigatory procedure is initiated by the military to ascertain the facts and nature of the applicant's claim. Based on this investigation and the criteria for granting conscientious objector status defined in the DOD policy, a determination is made to either grant or deny the applicant's claim.

With respect to the criteria for granting conscientious objector status, a crucial one is the requirement that the individual be "opposed to participation in war in any form."²² In other words, the objection "must be to all wars rather than a specific war."²³ This standard precludes those who are opposed to some wars, but not all wars, from being classified as conscientious objectors.

What is "stop-loss" and what is its effect on separations and discharges?

Under federal law, the President has the authority to suspend laws related to promotion, retirement and separation of military personnel during a period of time when members of the Reserve Component have been involuntarily ordered to active federal service.²⁴ Since 1990, this authority has been delegated to the Secretary of Defense by executive order.²⁵ Secretary of Defense Donald Rumsfeld delegated this authority to each of the individual military services on September 19, 2001, allowing those services to "stop loss" by keeping individuals on active duty beyond their normal date of separation or retirement. Stop-loss has usually been implemented to permit the military to retain people with critical skills during a time of crisis.

²⁰ (...continued)

code. Any person claiming exemption from combatant training and service because of such conscientious objections whose claim is sustained by the local board shall, if he is inducted into the armed forces under this title (said sections), be assigned to noncombatant service... or shall, if he is found to be conscientiously opposed to participation in such noncombatant service...be ordered ...to perform for a period equal to the period prescribed in section 4(b) (section 454(b) of this Appendix) such civilian work contributing to the maintenance of the national health, safety, or interest as the Director may deem appropriate...." Note, however, that the legal authority to induct men into the military, which is contained in the Military Selective Service Act, expired on July 1, 1973. Therefore, this provision of law is not relevant to people serving in the military today.

²¹ Department of Defense Directive 1300.6, *Conscientious Objectors*.

²² Department of Defense Directive 1300.6, *Conscientious Objectors*, paragraph 5.1.1.1.

²³ Department of Defense Directive 1300.6, *Conscientious Objectors*, paragraph 5.2.1.

²⁴ 10 U.S.C. 12305.

²⁵ Executive Order 12728, August 22, 1990. This authority was originally invoked by President George H. W. Bush during the Persian Gulf War and has remained in effect since then.

Since September 11, 2001, all of the Services have implemented such “skill based” stop loss for various lengths of time, although none of the Services currently have such a policy in effect. However, the Army has implemented a stop-loss policy which delays the departure of personnel from units deploying to Iraq and Afghanistan until 90 days after the unit returns from its deployment. The purpose of this “unit based” stop-loss is to maintain unit cohesion and thereby maximize military effectiveness among units headed for a combat environment. The Army estimates that this policy will affect 36,700 soldiers from the Army, Army Reserve, and Army National Guard during the current rotations for Iraqi Freedom and Enduring Freedom (OIF rotation 3/OEF rotation 6).²⁶

Most *involuntary* separations — for example, discharges due to criminal acts — will not be affected by stop-loss. Additionally, the adoption of a stop-loss policy does not modify service policies or regulations which might lead to an administrative discharge (e.g. for homosexuality) or to a medical discharge.

Compensation

What types of special pays and benefits are available to military personnel participating in OEF and OIF?

Many military personnel participating in OEF and OIF may be eligible for Hostile Fire or Imminent Danger Pay (HF/IDP). HF/IDP is authorized by 37 U.S.C. 310, which provides a special pay for “duty subject to hostile fire or imminent danger.” While DoD regulations distinguish between Hostile Fire Pay and Imminent Danger Pay, they are both derived from the same statute and an individual can only collect Hostile Fire Pay or Imminent Danger Pay, not both simultaneously.²⁷ The purpose of this pay is to compensate servicemembers for physical danger.²⁸ Iraq,

²⁶ Army estimates provided by Major Harvey Johnson, Office of the Undersecretary of Defense for Personnel and Readiness, August 26, 2004.

²⁷ DoD regulations make clear a distinction between imminent danger pay (IDP) and hostile fire pay (HFP), which is only implicit in the statute. IDP is provided to servicemembers serving in specifically designated places deemed to pose a threat of physical harm or imminent danger due to insurrection, war, or terrorism; HFP is provided to servicemembers in any location where members of the uniformed services are actually exposed to hostile fire or explosion of hostile mines. (In practice, however, this distinction tends to be blurred: areas where hostile fire events are likely to occur have usually already been designated as “imminent danger zones,” and, if not, they usually become so designated if hostile fire events occur on even a sporadic basis. Still, the distinction was clearly evidenced in the aftermath of the terrorist attacks of September 11, 2001 when military personnel located at the Pentagon and the World Trade Center on the date of the attacks were given HFP for the month of September, although no part of the United States is designated an “imminent danger zone”). IDP and HFP cannot be collected simultaneously. DOD Financial Management Regulation 7000.14-R, *Special Pay — Duty Subject to Hostile Fire or Imminent Danger*, August, 2002.

²⁸ Department of Defense, *Military Compensation Background Papers*, 5th ed., 1996, 173.

Afghanistan, Kuwait, Saudi Arabia and many other nearby countries²⁹ have been declared imminent danger zones. Military personnel serving in such designated areas are eligible for HF/IDP. To be eligible for this pay in a given month, a servicemember must have served some time in one of the designated zones, even if only a day or less. The authorizing statute for HF/IDP sets the rate at \$225 per month.³⁰

Military personnel serving in Iraq, Afghanistan, parts of the Persian Gulf region, and certain nearby areas³¹ are also eligible for Hardship Duty Pay (HDP). HDP is authorized by 37 U.S.C. 305. It is compensation for the exceptional demands of certain duty, including unusually demanding mission assignments or service in areas with extreme climates or austere facilities. The maximum amount of HDP permitted by the statute is \$300 per month. The current rate of HDP for Iraq and Afghanistan is \$100 per month.

Military personnel participating in OEF and OIF may also be eligible for Family Separation Allowance (FSA). FSA is authorized by 37 U.S.C. 427, which provides a special pay for those servicemembers *with dependents* who are separated from their families for more than 30 days. The purpose of this pay is to “partially reimburse, on average, members of the uniformed services involuntarily separated from their dependents for the reasonable amount of extra expenses that result from such

²⁹ Among the areas designated for receiving imminent danger pay are the land area of Afghanistan, Uzbekistan, Kyrgyzstan, Tajikistan, Pakistan, Iran, Azerbaijan, Iraq, Kuwait, Jordan, Saudi Arabia, Bahrain, Qatar, United Arab Emirates, Oman, Yemen, Georgia, Israel, Yemen, Djibouti, the Philippines, Indonesia, Malaysia, and most of Turkey. Service in the airspace above Afghanistan, Iraq, Kuwait, Saudi Arabia, Bahrain, Qatar, the Persian Gulf, and parts of Turkey qualifies as well. Also included is the surface area of the waters bounded by the Red Sea, the Gulf of Aden, the Gulf of Oman, and the Arabian Sea north of 10 degrees north latitude and west of 68 degrees east longitude. Sources: DOD Financial Management Regulation 7000.14-R, *Special Pay — Duty Subject to Hostile Fire or Imminent Danger*, October, 2003. Note that this is not a comprehensive list of all imminent danger locations: there are many locations in other parts of the world which have received this designation.

³⁰ Until recently, HF/IDP was set at \$150 per month. However, Congress temporarily increased that amount to \$225 per month in P.L. 108-136, section 619, November 24, 2003, National Defense Authorization Act for Fiscal Year 2004. Congress made this increase permanent in P.L. 108-375, section 623, October 28, 2004, Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005.

³¹ Among the areas designated for receiving hardship duty pay include Afghanistan, Kazakhstan, Kyrgyzstan, Uzbekistan, Turkmenistan, Tajikistan, India, Pakistan, Iraq, Kuwait, Oman, Yemen, Israel, Jordan, Georgia, Djibouti, and parts of the United Arab Emirates, Turkey, and Qatar. The Philippines, Malaysia, and Indonesia are also designated hardship duty pay locations. Only people serving on the ground are eligible for Hardship Duty Pay. Sources: DOD Financial Management Regulation 7000.14-R, *Special Pay — Hardship Duty*, August, 2004. Note that this is not a comprehensive list of all hardship duty locations: there are many locations in other parts of the world that have received this designation. Hardship Duty Pay replaced what was known as Foreign Duty Pay in 1999.

separation....”³² To be eligible for this allowance, U.S. military personnel must be separated from their dependents for 30 continuous days or more; but once the 30-day threshold has been reached, the allowance is applied retroactively to the first day of separation. The authorizing statute for FSA sets the rate at \$250 per month.³³

Another benefit available to those deployed to Afghanistan, Iraq, and other designated areas nearby³⁴ is eligibility for the Savings Deposit Program.³⁵ This program allows service members to earn a guaranteed rate of 10 percent interest on deposits of up to \$10,000, which must have been earned in the designated areas. The deposit is normally returned to the servicemember, with interest, within 90 days after he or she leaves the eligible region, although earlier withdrawals can sometimes be made for emergency reasons.

Finally, one of the more generous benefits for many of those serving overseas in OEF or OIF is the “combat zone tax exclusion.”³⁶ Afghanistan and the airspace above it have been designated a “combat zone” since September 19, 2001.³⁷ Military personnel serving in direct support of the operations in this combat zone are also eligible for the combat zone tax exclusion.³⁸ Additionally, certain areas in the

³² Department of Defense, *Military Compensation Background Papers*, 5th edition, 1996, 773.

³³ Until recently, the rate for Family Separation Allowance was \$100 per month. However, Congress temporarily increased this rate to \$250 per month in P.L. 108-136, section 619, November 24, 2003, National Defense Authorization Act for Fiscal Year 2004. Congress made this increase permanent in P.L. 108-375, section 623, October 28, 2004, Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005.

³⁴ Eligibility for the Savings Deposit Program includes Afghanistan, Bahrain, Djibouti, Iraq, Jordan, Kazakhstan, Kuwait, Kyrgyzstan, Oman, Pakistan, Philippines, Qatar, Saudi Arabia, Tajikistan, Turkey, Turkmenistan, United Arab Emirates, Uzbekistan, Yemen, the waters of the Red Sea, the Gulf of Aden, the Gulf of Oman, the Persian Gulf, and the Arabian Sea north of 10 degrees north latitude and west of 68 degrees east longitude, as well as the airspace above these regions. Eligibility for this benefit varies slightly depending on the area one is assigned to, but generally a servicemember must serve at least 30 days in the designated area. Some areas also grant eligibility if a servicemember serves at least one day in each of three consecutive months in the designated areas. Some areas require that service be in a designated combat zone, or in support of a designated combat zone, or that the servicemember be in receipt of hostile fire/imminent danger pay. Source: DOD Financial Management Regulation 7000.14-R, *Savings Deposit Program*, February 2002, with interim changes, and data provided by Lieutenant Colonel Janet Fenton, Office of the Secretary of Defense, Directorate of Compensation.

³⁵ 10 U.S.C. 1035.

³⁶ 26 U.S.C. 112.

³⁷ Source: Internal Revenue Service, *Combat Zones*, available at [<http://www.irs.gov/newsroom/article/0,,id=108331,00.html>]

³⁸ *Ibid.* To qualify under this provision, servicemembers must be serving in Pakistan, Tajikistan, or Jordan (as of September 19, 2001); Incirlik Air Base in Turkey (as of September 21, 2001); Uzbekistan or Kyrgyzstan (as of October 1, 2001); the Philippines (as of January 9, 2002); Yemen (as of April 10, 2002); or Djibouti (as of July 1, 2002).

Persian Gulf region³⁹ — including Iraq — have been designated combat zones since 1991. Military personnel serving in direct support of operations in this combat zone are also eligible for the combat zone tax exclusion.⁴⁰ For enlisted personnel and warrant officers, this means that all compensation for active military service in a combat zone is free of federal income tax. For commissioned officers, their compensation is free of federal income tax up to the maximum amount of enlisted basic pay plus any imminent danger pay received.⁴¹ While the combat zone tax exclusion contained in federal law applies only to federal income tax, almost all states have provisions extending the benefit to their state income tax as well.⁴²

What types of compensation and benefits are available to the dependents of U.S. military personnel who die in the line of duty while participating in ONE, OEF, or OIF?

Dependents of active duty military personnel who die in the line of duty are eligible for a variety of special payments and benefits. The major compensation and benefit programs are listed below.

Compensation in the Form of Cash Payments.

Death Gratuity. The death gratuity is a lump sum payment to the surviving spouse of the servicemember, or to the children of the servicemember in equal shares if there is no spouse.⁴³ The payment amount is \$12,420 for 2005.⁴⁴ The death gratuity may also be paid if death occurs within 120 days after release from active duty if the death resulted from injury or disease incurred or aggravated during

³⁹ *Ibid.* Includes Iraq, Kuwait, Saudi Arabia, Bahrain, Qatar, United Arab Emirates, Oman, the waters of Persian Gulf, the Red Sea, the Gulf of Aden, the Gulf of Oman, and the Arabian Sea north of 10 degrees north latitude and west of 68 degrees east longitude, as well as the airspace above these regions.

⁴⁰ *Ibid.* Includes Israel and Turkey (as of January 1, 2003) and the Mediterranean Sea east of 30 degrees east longitude (as of April 11, 2003).

⁴¹ According to the Internal Revenue Service, “For 2003, the monthly combat pay exclusion for officers totals \$5,957.70. For 2004, it totals \$6,315.90.” This information, and information on combat zone tax exclusion generally, is available at [<http://www.irs.gov/newsroom/article/0,,id=101262,00.html>].

⁴² Department of Defense, *Military Compensation Background Papers*, 5th Edition, September, 1996, 832-837.

⁴³ 10 U.S.C. 1475-1480. Amended by P.L. 108-136, section 619, November 24, 2003, National Defense Authorization Act for Fiscal Year 2004.

⁴⁴ Until recently, the death gratuity was statutorily defined as \$12,000. However, a provision in the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (P.L. 108-375, section 643(b), October 28, 2004) indexed the death gratuity to mirror increases in basic pay. Hence, while the gratuity was \$12,000 in 2004, it increased to \$12,420 in 2005 to reflect the 3.5% raise in basic pay given the service members.

military service.⁴⁵ The purpose of this benefit is to provide cash quickly to the survivors in order to help them meet immediate needs.

Payment for Unused Leave. The servicemembers' designated beneficiary, or the statutorily specified next of kin if no beneficiary was designated, is entitled to a payment for any unused leave the servicemember had accrued at the time of death.⁴⁶

Servicemembers Group Life Insurance (SGLI). All members of the military are automatically enrolled in SGLI for the maximum benefit of \$250,000. Servicemembers may reduce or decline coverage under SGLI, but doing so requires that they request this in writing. In contrast to most civilian life insurance providers, SGLI pays benefits in the event of combat-related deaths.⁴⁷

Compensation in the Form of Annuities.

Survivor Benefit Plan. Effective September 10, 2001, all active duty personnel are covered by the Survivor Benefit Plan (SBP).⁴⁸ Under the SBP, if a servicemember dies while on active duty, the surviving spouse is entitled to an annuity, which is based in part on the deceased's basic pay level⁴⁹ and years of service. The interaction between SBP benefits, Social Security benefits, and Dependency and Indemnity Compensation is complex and may result in reduced or offset SBP benefits. For a full description of these interactions, see CRS Report RL31664, *The Military Survivor Benefit Plan: A Description of Its Provisions*, by David Burrelli. SBP payments are terminated for a surviving spouse who remarries before age 55.

Dependency and Indemnity Compensation. The Dependency and Indemnity Compensation (DIC) program, administered by the Department of Veterans' Affairs, provides a monthly payment to unremarried surviving spouses, or eligible children, of servicemembers who die because of service related illnesses or injuries. At present, the monthly payment for surviving spouses is \$993 per month, plus \$247 per child. Additional payments can also be made if the survivor has certain disabilities.⁵⁰ See the previous paragraph on the Survivor Benefit Plan for important information on the combination of DIC with other government provided annuities.

⁴⁵ 10 U.S.C. 1476

⁴⁶ 10 U.S.C. 501(d)(1)

⁴⁷ 38 U.S.C. 1965-1979.

⁴⁸ The program was originally designed to provide benefits only to the widows or widowers of retirement-eligible servicemembers.

⁴⁹ Depending on when the deceased servicemember entered active duty, the basic pay level will be either the monthly basic pay earned just prior to death, or the average of the highest 36 months of basic pay that the servicemember earned.

⁵⁰ 38 U.S.C. 1311

Social Security Survivor Benefits. Surviving spouses and children of servicemembers who die while on active duty may be eligible for Social Security Survivor benefits if they meet certain eligibility requirements.⁵¹ The amount of benefits varies based on a number of factors, including the average lifetime earnings of the decedent, the number of quarters the decedent paid Social Security taxes, and certain characteristics of the beneficiary, such as age and relationship to the decedent. Remarriage can have an effect on a widow's or widower's benefit. See the previous paragraph on the Survivor Benefit Plan for important information on the combination of Social Security benefits with other government provided annuities.

Burial Benefits.

Expenses Related To Death. The following expenses may either be paid directly by the military service to which the deceased belonged, or reimbursed to the individual who pays for them: “(1) Recovery and identification of the remains. (2) Notification of the next of kin or other appropriate person. (3) Preparation of the remains for burial, including cremation if requested by the person designated to direct disposition of the remains. (4) Furnishing of a uniform or other clothing. (5) Furnishing of a casket or urn, or both, with outside box. (6) Hearse service. (7) Funeral director's service. (8) Transportation of the remains, and round-trip transportation and prescribed allowances for an escort of one person, to the place selected by the person designated to direct disposition of the remains or, if such a selection is not made, to a national or other cemetery which is selected by the Secretary and in which burial of the decedent is authorized. (9) Interment of the remains. (10) Presentation of a flag of the United States to the person designated to direct disposition of the remains...(11) Presentation of a flag of equal size to the flag presented under paragraph (10) to the parents or parent, if the person to be presented a flag under paragraph (10) is other than the parent of the decedent.”⁵²

Burial In National Cemeteries. Members of the Armed Forces who die while on active duty are eligible for burial in national cemeteries, including Arlington National Cemetery. The government provides a grave site, opening and closing of the grave, headstone or marker, and maintenance of the site at no cost to the family. Inurement of cremated remains in a columbarium is an option as well.

Other Benefits.

Housing Benefits. Current law allows the Secretary of Defense to permit the family of a servicemember who dies on active duty to remain in government quarters for up to 180 days, free of charge. Alternatively, the Secretary can authorize payment

⁵¹ A thorough description of Social Security Survivor Benefits, including eligibility requirements, is provided in *Background Material and Data on Programs Within the Jurisdiction of the Committee on Ways and Means (The Green Book)*, available at [<http://www.congress.gov/brbk/html/ebssc1.shtml>] under the heading “Detailed Program Description (From the Green Book).”

⁵² 10 U.S.C. 1482

of the Basic Allowance for Housing, a tax-free allowance designed to cover most of the costs of civilian housing in a given region, for 180 days.⁵³

Medical Benefits. The unremarried surviving spouse of a deceased servicemember remains eligible for TRICARE, the military health care system, until age 65. At age 65, the surviving spouse becomes eligible for TRICARE for Life, provided he or she has Medicare Part A and Part B coverage. Children of the deceased servicemember remain eligible for TRICARE until they become 21 years of age, although eligibility may extend past age 21 if the child meets certain requirements and is either enrolled full time in an institution of higher learning or has a severe disability. Surviving family members of a deceased servicemember receive TRICARE benefits at the active duty dependent rate for a three year period, after which they receive TRICARE benefits at the retiree dependent rates.⁵⁴

Commissary and Exchange Access. The unremarried surviving spouse of a deceased servicemember is eligible for unlimited access to the commissary and exchange systems indefinitely. Children of a deceased servicemember are eligible for unlimited access to the commissary and exchange system until they become 21 years of age or get married, although eligibility may extend past age 21 if the child meets certain requirements and is either enrolled full time in an institution of higher learning or has a severe disability.⁵⁵

Educational Assistance. The Survivors' and Dependents' Educational Assistance program,⁵⁶ administered by the Department of Veterans' Affairs, provides up to 45 months of educational assistance to unremarried⁵⁷ surviving spouses, or eligible children, of servicemembers who die in the line of duty. At present, the monthly payment is \$803 per month for full-time attendance at eligible institutions; a lesser amount is paid for part-time attendance. Unremarried spouses have up to ten years to use this benefit. Children may generally receive benefits between the ages of 18 and 26, although there are circumstances where a child can receive benefits before 18 or after 26. This benefit can be used for undergraduate or graduate study, technical or vocational schooling, correspondence courses, some types of on-the-job training, and certain other educational programs.

⁵³ 37 U.S.C. 403(l).

⁵⁴ Legislation governing military health care benefits is located at 10 U.S.C. 1071 et. seq. For more information on TRICARE, see CRS Issue Brief IB93103, *Military Medical Care Services: Questions and Answers*, by Richard Best. See also the DOD sponsored website, [<http://www.tricare.osd.mil>]

⁵⁵ See DOD Directive 1330.17-R, *Armed Services Commissary Regulations*, and DOD Directive 1330.9, *Armed Services Exchange Regulations*.

⁵⁶ Codified in Title 38, Chapter 35 of the United States Code.

⁵⁷ However, a recent change in the law allows a surviving spouse to remarry after age 57 and retain eligibility for this benefit, provided he or she still meets the other eligibility criteria. P.L. 108-183, section 101, December 16, 2003.

What protections and advantages does the Servicemembers' Civil Relief Act (SCRA) provide to military personnel?

Military personnel, including reservists called into active federal service, are eligible for a broad array of legal protections under the Servicemembers' Civil Relief Act (SCRA) of 2003.⁵⁸ (Note, however, that National Guardsmen who are serving in a purely state status are *not* covered by the SCRA; National Guardsmen performing full time National Guard duty under Title 32, section 502(f) of the U.S. Code are eligible for coverage under the SCRA in certain circumstances).⁵⁹ Among other things, the SCRA provides military personnel with certain protections against rental property evictions, mortgage foreclosures, insurance cancellations, and government property seizures to pay tax bills. The SCRA also limits to 6 percent the amount of interest that the servicemember has to pay on loans — except student loans — incurred prior to entry onto active duty. Usually, the provisions of the SCRA only apply during the period of active military service, or for a short period of time afterwards. For a full description of the legal protections provided to activated reservists by the SCRA, see the CRS Report RL32360, *The Servicemembers' Civil Relief Act (P.L. 108-189)*, by Estella Velez Pollack.

Force Structure

Does the military have sufficient manpower to conduct all of the missions it is currently assigned?

Prior to the September 11th attacks, there was a serious debate within Congress and the executive branch over whether the military was being tasked with more missions than it could realistically handle, given its manpower levels. Congress was especially concerned that these missions — in Bosnia, Kosovo, Southwest Asia, the Sinai, and elsewhere — might be producing personnel tempo (PERSTEMPO) levels⁶⁰ high enough to have a negative effect on retention.⁶¹ As such, Congress

⁵⁸ P.L. 108-139, codified at 50 U.S.C. App. 501 et. seq. The SCRA replaced the Soldiers' and Sailors' Civil Relief Act (SSCRA) of 1940.

⁵⁹ The SCRA covers members of the National Guard serving on active duty under Title 10 of the U.S. Code, and members of the National Guard serving "under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under section 502(f) of title 32, United States Code, for purposes of responding to a national emergency declared by the President and supported by Federal funds." This is narrowly defined subset of full time National Guard duty which includes, for example, the thousands of National Guard personnel who performed airport security missions after the terrorist attacks of September 11, 2001. For more information on non-federal status for National Guardsmen, see CRS Report RL30802, *Reserve Component Personnel Issues: Questions and Answers*, by Lawrence Kapp.

⁶⁰ Personnel tempo is the rate at which military personnel are deployed away from their home station.

⁶¹ Deployments can have a positive effect on retention, but some studies indicate that after (continued...)

passed laws requiring the services to track the PERSTEMPO of every servicemember, to monitor individual PERSTEMPO levels more closely, and to pay an allowance to servicemembers assigned lengthy or numerous deployments.⁶² Similar concerns about PERSTEMPO led General Eric Shinseki, the Army Chief of Staff, to assert before the House Armed Services Committee in July, 2001, that “Given today’s mission profile, the Army is too small for the mission load it is carrying.” During that hearing, both Shinseki and Secretary of the Army Thomas White endorsed a proposal to increase the Army’s end strength from 480,000 to 520,000 soldiers.⁶³

Since September 11, 2001, operations Noble Eagle, Enduring Freedom and Iraqi Freedom have dramatically increased the manpower needs of the military services. In the past year and a half, this has been especially true for the Army, which has shouldered the bulk of the manpower burden associated with the occupation of Iraq. These manpower needs have been filled primarily through the call up of over 400,000 reservists, longer duty days and higher PERSTEMPO rates for many active duty personnel, and the use of contract personnel. So far, this response has been enabled the military to perform its assigned missions, but it could cause problems in the future — for example, in unacceptably low retention rates, unacceptable performance levels, and difficulty responding to new crises — if carried out over an extended period of time.

In order to prevent such problems from occurring, Congress and the executive branch have taken a number of actions. For example, at the end of FY2003 and FY2004 the Department of Defense invoked a statutory provision which allowed it to exceed its authorized end strength.⁶⁴ Additionally, Congress recently authorized

⁶¹ (...continued)

a certain threshold level, high PERSTEMPO levels have a negative effect on retention. See for example James Hosek and Mark Totten, *Does Perstempo Hurt Reenlistment? The Effect of Long or Hostile Perstempo on Reenlistment*, RAND, 1998; Paul Sticha, Paul Hogan and Diane Maris, *Personnel Tempo: Definition, Measurement, and Effects on Retention, Readiness and Quality of Life*, Army Research Institute, 1999; and Peter Francis, *OPTEMPO and Readiness*, Center for Naval Analysis, 1999.

⁶² The PERSTEMPO legislation is codified at 10 U.S.C. 136, 10 U.S.C. 487, 10 U.S.C. 991, and 37 U.S.C. 436. 10 U.S.C. 991(d) contains a national security waiver that states “The Secretary of the military department concerned may suspend the applicability of this section to a member or any group of members under the Secretary’s jurisdiction when the Secretary determines that such a waiver is necessary in the national security interests of the United States.” On October 8, 2001, Deputy Secretary of Defense Paul Wolfowitz signed an order indefinitely suspending part of the PERSTEMPO legislation, including payments authorized under 37 U.S.C. 436.

⁶³ Nicholas J. Carter, *ArmyLink News*, “White, Shinseki: Army Needs More Soldiers,” July 24, 2001.

⁶⁴ Congress regulates the maximum size of the armed forces by setting statutory limits on “end strength” of the military services. (End strength is defined by 10 U.S.C. 101(b)(11) as “the largest number of members authorized to be in an armed force, a component, a branch, a grade, or any other category of the armed forces.”). However, there are several (continued...)

an increase of 20,000 to the size of the active Army and an increase of 3,000 to the size of the active Marine Corps in the Ronald W. Reagan National Defense Authorization Act for FY2005.⁶⁵ A separate provision in that law gives the Secretary of Defense the authority to temporarily increase the size of the Army by another 10,000 people, and the size of the Marine Corps by 6,000 people.⁶⁶

Another prominent initiative intended to reduce manpower strain is the Army's ongoing effort to reorganize itself, converting from a divisional structure to one based on brigade sized "units of action."⁶⁷ The Army believes that this reorganization will increase its pool of deployable units, which could help reduce PERSTEMPO rates. The Army is also shifting of some critical military capabilities from the reserve component to the active component, thereby reducing the need to call up reserve units to support military operations, and retraining personnel from skills in lower demand (such as air defense and artillery) to skills in higher demand (such as military police).

Other alternatives which have been suggested include contracting out more functions to the private sector, increasing the use of technologies which reduce manpower needs, securing greater participation in Iraq and Afghanistan by allied military personnel, and reducing U.S. involvement in missions such as the Sinai and Kosovo.⁶⁸

What would it take to reinstitute the draft? Is a return to conscription in the U.S. likely?

Any attempt to reinstate the draft would require congressional approval. The legal framework for conscription is codified in law, but the law contains a provision

⁶⁴ (...continued)

provisions of law which allow the services to exceed their authorized end strength under certain circumstances. 10 U.S.C. 115(e) allows the Secretary of Defense to increase the active duty end strength for a fiscal year for any of the armed forces by not more than three percent, and the end strength of certain reserve component personnel by not more than two percent, if he determines it to be in the national interest. 10 U.S.C. 115(f) allows the Secretary of a military department to increase the authorized active duty end strength of the armed force under his or her jurisdiction by not more than two percent if he determines it to be in the national interest. 10 U.S.C. 123a. allows the President to waive any statutory end strength with respect to a given fiscal year if, at the end of that fiscal year, "there is in effect a war or national emergency." This latter provision was delegated by the President to the Secretary of Defense on September 14, 2001 (Executive Order. 13223).

⁶⁵ P.L. 108-375, section 401 and 402, October 28, 2004. The increases for the Army and Marine Corps specified in section 401 are subject to a condition that the costs of the increases "be paid out of funds authorized to be appropriated for that fiscal year [2005] for a contingent emergency reserve fund or as an emergency supplemental appropriation."

⁶⁶ P.L. 108-375, section 403, October 28, 2004.

⁶⁷ See CRS Report RL32476, *U.S. Army's Modular Redesign: Issues for Congress*, by Andrew Feickert.

⁶⁸ Thom Shanker, "After the War: The Military; Rumsfeld Seeking To Bolster Force Without New G.I.'s," *New York Times*, August 24, 2003, 1.

which prohibits actual induction into the Armed Forces after July 1, 1973.⁶⁹ To reinstate the draft, Congress would have to pass legislation reauthorizing inductions.

At the present time, it appears unlikely that the U.S. will reinstate the draft to meet its manpower needs. The military is generally meeting its recruiting and retention goals at the present time, and it has a large pool of trained personnel in the reserves that it can draw on to augment its active forces.⁷⁰ Additionally, while conscription is useful for producing large numbers of basically trained military personnel, it is not very useful for producing high skill specialists which the military often has the greatest need for: for example, intelligence analysts, linguists, special operations forces, civil affairs personnel, and pilots. These people need years of training and high motivation levels to become proficient in their military occupations. However, should reconstruction and peacekeeping efforts in Iraq require a major U.S. presence for a prolonged period of time, the utility of a draft might become a more active consideration. Such a mission could demand a large numbers of military personnel who do not require the more specialized skills.⁷¹ The draft might also be useful if Congress decided to substantially expand the size of the Army over a short period of time.

See also CRS Report RL31682, *The Military Draft and a Possible War with Iraq*, by Robert Goldich, for a more detailed discussion of arguments for and against a draft

⁶⁹ The Military Selective Service Act, 50 U.S.C. App. 451 et. seq. 50 U.S.C. App. 467(c) states: “Notwithstanding any other provision of this title, no person shall be inducted for training and service in the Armed Forces after July 1, 1973, except persons now or hereafter deferred under section 6 of this title after the basis of such deferment ceases to exist.”

⁷⁰ Although, from a historical perspective, this pool has already been utilized quite heavily since September 11, 2001, many members of the Ready Reserve have not been mobilized yet. The total strength of the Ready Reserve — which is made up of the Selected Reserve, the Individual Ready Reserve, and the Inactive National Guard — is currently about 1.16 million; of these, roughly 35% have been involuntarily mobilized for federal service in ONE/OEF/OIF under 10 U.S.C. 12302. At least another 7% of the Ready Reserve served in these or other operations (e.g. Bosnia, Kosovo, Airport Security), either in a volunteer status or under an involuntary activation authority other than 10 U.S.C. 12302 since September 11, 2001. Still, it appears that over half of the Ready Reserve has not been activated since September 11, 2001. On the other hand, if one looks only at the Selected Reserve, the mobilization ratio is higher; and if one looks at just the Selected Reserve of the Army Reserve and Army National Guard, the mobilization ratio is higher still. Based on the best available data, it appears that close to 50% of the Selected Reserve of the Army National Guard and the Army Reserve has been involuntarily mobilized for federal service in ONE/OEF/OIF under 10 U.S.C. 12302 since September 11, 2001. However, given the periodic turnover of personnel in the National Guard and Reserves (i.e. current members departing or retiring, and new members joining), these figures likely overstate the ratio of already mobilized individuals in these organizations.

⁷¹ Examples would include junior level security guards and personnel with basic construction skills. However, some would argue that these tasks are not inherently military and could be performed by Iraqi civilians rather than by U.S. military personnel; others would argue that these tasks take on a military character in a hazardous environment like Iraq.